

WILMER CUTLER PICKERING  
HALE AND DORR LLP

Molly S. Boast (*admitted pro hac vice*)  
7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
Telephone: (212) 230-8800  
Facsimile: (212) 230-8888  
molly.boast@wilmerhale.com

Christopher E. Babbitt (*admitted pro hac vice*)  
1875 Pennsylvania Avenue NW  
Washington, DC 20006  
Telephone: (202) 663-6000  
Facsimile: (202) 663-6363  
christopher.babbitt@wilmerhale.com

Christopher T. Casamassima (*admitted pro hac vice*)  
350 South Grand Ave.  
Los Angeles, CA 90071  
Telephone: (213) 443-5300  
Facsimile: (213) 443-5400  
chris.casamassima@wilmerhale.com

STEPTOE & JOHNSON LLP  
Paul K. Charlton (012449)  
Karl M. Tilleman (013435)  
201 East Washington Street, Suite 1600  
Phoenix, Arizona 85004-2382  
Telephone: (602) 257-5200  
Facsimile: (602) 257-5299  
pcharlton@steptoe.com  
ktilleman@steptoe.com

Attorneys for Defendants

**UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA**

SolarCity Corporation

Plaintiff,

vs.

Salt River Project Agricultural Improvement  
and Power District

Defendants.

Case No. 2:15-CV-00374-DLR

**SALT RIVER PROJECT  
AGRICULTURAL  
IMPROVEMENT AND POWER  
DISTRICT'S ANSWER TO  
SOLARCITY'S AMENDED  
COMPLAINT AND  
AFFIRMATIVE DEFENSES**

**JURY TRIAL DEMANDED**

For its answer to Plaintiff SolarCity Corporation's Amended Complaint (ECF No. 39), Defendant<sup>1</sup> Salt River Project Agricultural Improvement and Power District ("the District"), through its undersigned counsel, states as follows:

**[INTRODUCTION]<sup>2</sup>**

1. The allegations in paragraph 1 constitute Plaintiff's characterization of this action or legal conclusions to which no response is required. To the extent a response is required, deny.

2. The allegations in paragraph 2 constitute legal conclusions to which no response is required. To the extent a response is required, deny.

3. The District admits the first sentence of paragraph 3. Deny the remaining allegations in paragraph 3 for lack of knowledge or information sufficient to form a belief as to their truth.

4. The allegations in paragraph 4 constitute Plaintiff's characterization of this action to which no response is required. To the extent a response is required, the District denies the first sentence of paragraph 4. The District admits that solar customers cannot completely disconnect from the District's grid because they still need power during the evening hours and at other times when their energy demands exceed what their solar energy systems produce. Except as expressly admitted, deny.

5. Deny the allegations in paragraph 5 because they are not sufficiently specific about the SEPPs at issue to permit an informed response. The District admits that the District approved an overall average annual price increase of 3.9% for all residential customers in February 2015. Except as expressly admitted, deny.

---

<sup>1</sup> This Answer is submitted only on behalf of Defendant Salt River Project Agricultural Improvement and Power District. The claims against Defendant Salt River Valley Water Users' Association ("the Association") were dismissed in the Court's October 27, 2015 order (ECF No. 77). The Amended Complaint improperly conflates the Association and the District by referring to them collectively as "SRP," when they are in fact distinct legal entities. Any allegation regarding "SRP" is denied on that basis.

<sup>2</sup> The headings in the Amended Complaint do not constitute legally operative allegations that require a response. To the extent a response is required, any allegations contained in the headings are denied.

1           6.     Deny the allegations in paragraph 6 because they are not sufficiently specific  
2 about the SEPPs at issue to permit an informed response. To the extent a further response is  
3 required, deny.

4           7.     Deny.

5           8.     Deny.

6           9.     Deny.

7           10.    Deny.

8           11.    Deny.

9           12.    The allegations in the first two sentences of paragraph 12 constitute legal  
10 conclusions and Plaintiff's characterization of this action, to which no response is required.  
11 To the extent a response is required, deny. Deny the remaining allegations in paragraph 12  
12 because they are not sufficiently specific about the SEPPs at issue to permit an informed  
13 response. To the extent a further response is required, deny.

14           13.    The allegations in paragraph 13 constitute legal conclusions to which no  
15 response is required. To the extent a response is required, deny.

16           14.    The allegations in paragraph 14 constitute Plaintiff's characterization of this  
17 action to which no response is required. To the extent a response is required, deny.

18           15.    The District admits that SolarCity is a publicly traded company. Deny the  
19 remaining allegations in paragraph 15 for lack of knowledge or information sufficient to  
20 form a belief as to their truth.

21           16.    Deny the allegations in paragraph 16 for lack of knowledge or information  
22 sufficient to form a belief as to their truth.

23           17.    The District admits that SolarCity has customers in the District's service  
24 territory. As to the remaining allegations in paragraph 17, deny for lack of knowledge or  
25 information sufficient to form a belief as to their truth.

26           18.    To the extent the allegations in paragraph 18 accurately describe the District's  
27 legal status, that status speaks for itself and no response is required. Deny the allegations in  
28 paragraph 18 because they are not sufficiently specific as to what is meant by "power-and-

1 water utility” to permit an informed response. The District avers that it is an agricultural  
2 improvement district under Arizona law. The District admits that it has over 900,000  
3 electricity customers. Except as expressly admitted, deny.

4 19. To the extent the allegations in paragraph 19 accurately describe the referenced  
5 2015 Annual Report, that document speaks for itself and no response is required. Deny the  
6 remaining allegations in paragraph 19.

7 20. To the extent the allegations in the first sentence of paragraph 20 accurately  
8 describe the referenced 2015 Annual Report, that document speaks for itself and no response  
9 is required. Deny the remaining allegations in the first sentence of paragraph 20 because  
10 they are not sufficiently specific about the “numerous other SRP documents” referenced to  
11 permit an informed response. The allegations in the third sentence of paragraph 20  
12 constitute legal conclusions to which no response is required. To the extent a response is  
13 required, deny the allegations in the third sentence of paragraph 20. Deny the remaining  
14 allegations in paragraph 20.

15 21. The allegations in paragraph 21 are no longer at issue in this case following the  
16 Court’s October 27, 2015 ruling granting the Association’s motion to dismiss (ECF No. 77)  
17 and no response is required. To the extent a response is required, the District admits that the  
18 same individuals currently serve in the positions of President, Vice President, and on the  
19 Executive Management team for both the Association and the District. The District further  
20 admits that nine of the fourteen individuals currently serving as District Board members also  
21 serve on the Association’s Board. Deny that all 30 members of the Association Council  
22 serve on the District Council. Aver that 29 individuals serving as current members of the  
23 Association Council also serve on the District Council. Aver that the responsibilities of the  
24 positions identified in paragraph 21 differ with respect to the District and the Association.  
25 Except as expressly admitted, deny.

26 22. The allegations in paragraph 22 are no longer at issue in this case following the  
27 Court’s October 27, 2015 ruling granting the Association’s motion to dismiss (ECF No. 77)  
28

1 and no response is required. Further, the allegations in paragraph 22 constitute legal  
2 conclusions to which no response is required. To the extent a response is required, deny.

3 23. The allegations in paragraph 23 are no longer at issue in this case following the  
4 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
5 and no response is required. Further, the allegations in paragraph 23 constitute legal  
6 conclusions to which no response is required. To the extent a response is required, deny.

7 24. The allegations in paragraph 24 are no longer at issue in this case following the  
8 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
9 and no response is required. To the extent a response is required, deny.

10 25. The allegations in paragraph 25 are no longer at issue in this case following the  
11 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
12 and no response is required. Further, to the extent the allegations in paragraph 25 accurately  
13 describe Scott Harelson's April 2015 statement, that quotation speaks for itself and no  
14 response is required. To the extent a response is required, deny.

15 26. The allegations in paragraph 26 are no longer at issue in this case following the  
16 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
17 and no response is required. To the extent the allegations in paragraph 26 accurately  
18 describe the referenced reports, those reports speak for themselves and no response is  
19 required. To the extent a response is required, the District avers that the Association is a  
20 quasi-public Arizona corporation whose shareholders are the subscribing landowners. *See*  
21 Dkt. 52 at 3. Except as expressly admitted, deny.

22 27. The allegations in paragraph 27 are no longer at issue in this case following the  
23 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
24 and no response is required. To the extent a response is required, deny the allegations in the  
25 first sentence of paragraph 27 because they are not sufficiently specific about the source of  
26 the referenced statements to permit an informed response. The District admits that the  
27 District and the Association issue combined financial statements. The District admits that  
28 the Association was formed in 1903 by a group of Salt River Valley landowners as a quasi-

1 public corporation under Arizona law to enter into contracts with the federal government for  
2 the irrigation of their land. Except as expressly admitted, deny.

3 28. The allegations in paragraph 28 are no longer at issue in this case following the  
4 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
5 and no response is required. To the extent a response is required, the District admits that it  
6 was created in 1937 as a political subdivision of the state of Arizona. The District further  
7 admits that it was empowered to issue municipal bonds, the proceeds from which were long  
8 ago used to redeem outstanding higher-interest bonds. The District admits that it is  
9 responsible for power delivery and water storage, and that the Association manages water  
10 delivery as an agent of the District. Except as expressly admitted, deny.

11 29. The allegations in paragraph 29 are no longer at issue in this case following the  
12 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
13 and no response is required. Moreover, the allegations in paragraph 29 constitute legal  
14 conclusions to which no response is required. To the extent a response is required, deny.

15 30. The allegations in paragraph 30 are no longer at issue in this case following the  
16 Court's October 27, 2015 ruling granting the Association's motion to dismiss (ECF No. 77)  
17 and no response is required. Moreover, the allegations in paragraph 30 constitute legal  
18 conclusions to which no response is required. To the extent a response is required, deny.

19 31. Deny the allegations in the first sentence of paragraph 31 because it is  
20 insufficiently specific as to the meaning of "private markets" and "private economic  
21 interests" to permit an informed response. To the extent a further response is required, deny.  
22 The allegations in the second sentence of paragraph 31 constitute legal conclusions to which  
23 no response is required. To the extent the second sentence of paragraph 31 characterizes  
24 unspecified decisions of other courts in other contexts, those decisions speak for themselves  
25 and no response is required. To the extent a response is required, deny.

26 32. The District admits that participation in the District's elections, as defined by  
27 Arizona statutes, is limited to individuals who own qualified land or who are appointed by  
28 trustees to vote qualified land held in a qualifying trust. The District avers that the Board

1 consists of ten members elected from voting divisions and four members elected at large.  
2 The District further avers that, except for the four at-large Board seats, the President, Vice  
3 President and Board and Council members are elected on an acreage-based voting system.  
4 For the at-large Board seats, each landowner within the District has one vote. Except as  
5 expressly admitted, deny.

6 33. Deny.

7 34. Deny the allegations in paragraph 34 because they are not sufficiently specific  
8 about the “online biography” referenced to permit an informed response. To the extent the  
9 allegations in paragraph 34 accurately describe the “online biography,” that document speaks  
10 for itself and no response is required. Further deny the allegations in paragraph 34 because  
11 they are not sufficiently specific as to what is meant by “interests in agricultural businesses”  
12 to permit an informed response. Deny the remaining allegations in paragraph 34.

13 35. The allegations in paragraph 35 and subparagraphs 35(a)-(c) reference  
14 statements in documents that speak for themselves and/or constitute legal conclusions and no  
15 response is required. Further deny the allegations in paragraph 35 and subparagraphs 35(a)-  
16 (c) because they are not sufficiently specific about the source of the referenced statements to  
17 permit an informed response. Deny the remaining allegations in paragraph 35.

18 36. To the extent the allegations in paragraph 36 accurately describe the referenced  
19 Standard and Poor’s document, that document speaks for itself and no response is required.  
20 Deny the remaining allegations in paragraph 36.

21 37. To the extent the allegations in the first and second sentences of paragraph 37  
22 characterize the terms of agreements between the District and solar energy providers, those  
23 agreements speak for themselves and no response is required. The District admits that it  
24 sells output from solar facilities. Except as expressly admitted, deny.

25 38. The allegations in paragraph 38 and subparagraphs 38(a)-(b) are not relevant to  
26 this litigation, are designed to embarrass or harass, are speculative, or constitute legal  
27 conclusions. Therefore, no response is required. Further, the allegations in paragraph 38 are  
28

1 no longer at issue in this case following the Court's October 27, 2015 ruling on the District's  
2 Motion to Dismiss (ECF No. 77) and no response is required.

3 39. Deny the allegations in the first sentence of paragraph 39 because they are  
4 insufficiently specific as to the meaning of "other market participants" to permit an informed  
5 response. The District admits that the District Board has met in closed and/or executive  
6 sessions to discuss matters related to competitive activity, including trade secrets or  
7 privileged or confidential commercial or financial information. To the extent the referenced  
8 agenda item is accurately described, the agenda speaks for itself and no response is required.  
9 Deny the allegations in the last sentence of paragraph 39. Except as expressly admitted,  
10 deny.

11 40. The allegations in paragraph 40 constitute legal conclusions to which no  
12 response is required. To the extent a response is required, the District avers that it is a  
13 political subdivision of the State of Arizona.

14 41. To the extent the allegations in paragraph 41 characterize an April 16, 2015  
15 written statement from an attorney for the District, that statement speaks for itself and no  
16 response is required. To the extent a response is required, admit, except "SRP" should be  
17 replaced with "the District."

18 42. The allegations in paragraph 42 constitute legal conclusions to which no  
19 response is required. To the extent a response is required, aver that the District's Board is  
20 authorized under Arizona law to set and regulate rates within its service territory and that,  
21 under certain circumstances, the United States Department of the Interior may exercise  
22 review authority over the District. Deny the remaining allegations in paragraph 42.

23 **[JURISDICTION AND VENUE]**

24 43. The allegations in paragraph 43 constitute legal conclusions or  
25 characterizations of this action to which no response is required. To the extent a response is  
26 required, deny.

27 44. The allegations in paragraph 44 constitute legal conclusions to which no  
28 response is required. To the extent a response is required, deny.



1           45.    The allegations in paragraph 45 constitute legal conclusions to which no  
2 response is required. To the extent a response is required, the District admits that venue is  
3 proper.

4           46.    Deny the allegations in the first sentence of paragraph 46. Deny the allegations  
5 in the second sentence of paragraph 46 for lack of knowledge or information sufficient to  
6 form a belief as to their truth.

7           47.    The allegations in paragraph 47 constitute legal conclusions to which no  
8 response is required. To the extent a response is required, deny.

9                           **[RELEVANT MARKETS AND MARKET POWER]**

10          48.    Deny.

11          49.    Deny.

12          50.    Deny.

13          51.    To the extent the allegations in paragraph 51 accurately describe the referenced  
14 report from Edison Electric Institute, that document speaks for itself and no response is  
15 required. Deny the remaining allegations in paragraph 51.

16          52.    Deny.

17          53.    The allegations in paragraph 53 constitute legal conclusions to which no  
18 response is required. To the extent a response is required, deny.

19          54.    The allegations in paragraph 54 constitute legal conclusions to which no  
20 response is required. To the extent a response is required, deny.

21          55.    Deny.

22          56.    Admit, except that “SRP” should be replaced with “the District.”

23          57.    Deny.

24          58.    Deny.

25          59.    The allegations in paragraph 59 are no longer at issue in this case following the  
26 Court’s October 27, 2015 ruling on the District’s motion to dismiss (ECF No. 77) and no  
27 response is required. To the extent a response is required, deny.

1           60.    The allegations in paragraph 60 are no longer at issue in this case following the  
2 Court's October 27, 2015 ruling on the District's motion to dismiss (ECF No. 77) and no  
3 response is required. To the extent a response is required, deny.

4           61.    The allegations in paragraph 61 are no longer at issue in this case following the  
5 Court's October 27, 2015 ruling on the District's motion to dismiss (ECF No. 77) and no  
6 response is required. To the extent the graphic is accurately reproduced from a document  
7 created by the District, that document speaks for itself and no response is required. To the  
8 extent a response is required, deny.

9           62.    The allegations in paragraph 62 are no longer at issue in this case following the  
10 Court's October 27, 2015 ruling on the District's motion to dismiss (ECF No. 77) and no  
11 response is required. To the extent a response is required, deny.

12           63.    The District admits that "virtually all" of its customers who self-generate a  
13 portion of their electricity continue to purchase a portion of their electricity from the District.  
14 The allegations in the second sentence of paragraph 63 constitute legal conclusions to which  
15 no response is required. To the extent a response is required, deny that retail electricity and  
16 grid access are separate products, and deny the remainder of the allegations in the second  
17 sentence of paragraph 63. Except as expressly admitted, deny.

18           64.    The District admits that a speaker from the Electric Power Research Institute  
19 made the statements quoted in the second sentence of paragraph 64 at a hearing. Deny the  
20 substance of those statements for lack of knowledge or information sufficient to form a belief  
21 as to their truth. Except as expressly admitted, deny.

22           65.    The allegations in paragraph 65 constitute legal conclusions to which no  
23 response is required. To the extent a response is required, deny.

24           66.    The allegations in paragraph 66 constitute legal conclusions to which no  
25 response is required. Further, to the extent the allegations of paragraph 66 accurately  
26 describe the content of Arizona statutes, those statutes speak for themselves and no response  
27 is required. To the extent a response is required, deny.



1 related to distributed generation. The District admits that it has committed to buy the output  
2 from at least three substantial solar facilities and owns at least three facilities outright.

3 Except as expressly admitted, deny.

4 73. The allegations in paragraph 73 constitute legal conclusions to which no  
5 response is required. Further, the allegations in paragraph 73 are insufficiently specific as to  
6 what is meant by “distributed solar investments,” “rational,” and “justified” to permit an  
7 informed response. To the extent a response is required, the District admits that its programs  
8 with respect to distributed generation were “justified” (as the District understands the term)  
9 for a variety of reasons, including the ability to obtain renewable energy credits. Except as  
10 expressly admitted, deny.

11 74. The District admits that it has offered and offers “net metering” to residential  
12 and small-to-medium sized commercial customers. The District further admits that, under its  
13 “net metering” policy, the District offers its customers a bill credit for excess solar  
14 production when the customer’s distributed solar system produces more energy than the  
15 customer uses. Except as expressly admitted, deny.

16 75. Deny the allegations in paragraph 75 because they are not sufficiently specific  
17 as to which particular “net metering” program (if any) they refer to permit an informed  
18 response. To the extent a response is required, the District admits that, under the District’s  
19 current net metering policy, excess electricity from a customer’s distributed solar system is  
20 transferred onto the grid, including for distribution to other customers, and that a distributed  
21 solar customer is billed for the customer’s “net” electricity use (i.e. the customer’s total  
22 energy usage minus the energy produced by the customer’s distributed solar). Except as  
23 expressly admitted, deny.

24 76. The District admits that it adopted a net metering program, but denies the  
25 remainder of the allegations in the first sentence of paragraph 76. Deny the allegations  
26 concerning benefits to customers for lack of knowledge or information sufficient to form a  
27 belief as to their truth. Except as expressly admitted, deny.

1           77. To the extent the quotations in paragraph 77 are accurate, those quotations  
2 speak for themselves and no response is required. Deny the remaining allegations in  
3 paragraph 77.

4 ***[SRP Begins to Change Course to Eliminate Competition]***

5           78. Deny.

6           79. The District admits that the District developed a “Community Solar” program  
7 that permits its customers to purchase solar-generated electricity. Except as expressly  
8 admitted, deny.

9           80. Deny.

10          81. Deny.

11          82. Deny.

12          83. Deny the allegations in the first sentence of paragraph 83. To the extent the  
13 second sentence of paragraph 83 accurately describes John Tucker’s statement, that  
14 statement speaks for itself and no response is required. Deny the remaining allegations in the  
15 second sentence of paragraph 83. Deny the allegations in the third sentence of paragraph 83  
16 for lack of knowledge or information sufficient to form a belief as to their truth.

17          84. Deny.

18          85. Deny.

19          86. Deny the allegations in paragraph 86 because they are not sufficiently specific  
20 about the source of the quotations to permit an informed response. To the extent the  
21 quotations are accurate, they speak for themselves and no response is required. To the extent  
22 a response is required, deny.

23          87. To the extent the quotation in Paragraph 87 is accurate, that quotation speaks  
24 for itself and no response is required. Deny the remaining allegations in paragraph 87.

25 ***[SRP Changes Course]***

26          88. Deny.

27          89. The District admits that the District opened a public pricing process on  
28 December 12, 2014 to consider a proposed overall average annual price increase, as well as a

1 new price plan for residential customers who self-produce a portion of their energy using  
2 rooftop solar panels or other technologies. Except as expressly admitted, deny.

3 90. The District admits that the District spent approximately \$1.7 million on  
4 advertising and communications between December 2014 and February 2015, some of which  
5 was in connection with the public pricing process and some of which supported other  
6 initiatives. The District admits that these communications included notifications about  
7 proposed pricing changes and a communication regarding a new Community Solar plant,  
8 among other topics. Except as expressly admitted, deny.

9 91. The District admits that, following notice to customers in November 2014, the  
10 District initiated a series of hearings and disclosures in December 2014 in accordance with  
11 its obligations under Arizona law. The allegations in the second sentence of paragraph 91  
12 constitute legal conclusions to which no response is required. To the extent a response is  
13 required, deny. Except as expressly admitted, deny.

14 92. To the extent the allegations in paragraph 92 refer to a statement by a  
15 spokesperson for the District, they are not sufficiently specific as to the source of those  
16 statements to permit an informed response. To the extent a response is required, the District  
17 admits that a spokesperson for the District described an “informal process to allow  
18 participants to gather information and ask questions of Management.” The District admits  
19 that SolarCity does not contract directly with the District to provide solar systems to  
20 customers. Except as expressly admitted, deny.

21 93. The allegations in paragraph 93 constitute legal conclusions to which no  
22 response is required. To the extent a response is required, deny.

23 94. The allegations in paragraph 94 constitute legal conclusions to which no  
24 response is required. To the extent a response is required, deny.

25 95. Deny the allegations in paragraph 95 because they are not sufficiently specific  
26 as to what is meant by “late in the process” to permit an informed response. To the extent a  
27 response is required, the District avers that it followed the protocols set forth in the published  
28

1 notice regarding deadlines for the submission of written comments and deadlines in  
2 connection with the pricing process opened on December 12, 2014.

3 96. To the extent the allegations in the first sentence of paragraph 96 accurately  
4 describe the referenced letter, that letter speaks for itself and no response is required. The  
5 District admits that SolarCity's attorneys met with certain Board members concerning  
6 SolarCity's threats of litigation. The District further admits that the District was aware of  
7 SolarCity's threatened litigation and held an executive session of the Board during the  
8 February 26, 2015 meeting. Except as expressly admitted, deny.

9 97. Deny the allegations in paragraph 97 because they are not sufficiently specific  
10 as to what is meant by "minor" to permit an informed response. To the extent a response is  
11 required, the District admits that its Board modified and approved changes to its SEPPs on  
12 February 26, 2015.

13 98. Deny.

14 99. Deny.

15 100. Deny.

16 101. Deny the allegations in paragraph 101 and subparagraphs 101(a) and (b).

17 102. Deny the allegations in the of the first sentence of paragraph 102 because they  
18 are not sufficiently specific about the SEPPs at issue or the time period in question to permit  
19 an informed response. The allegations in the second sentence of paragraph 102 constitute  
20 legal conclusions to which no response is required. To the extent a response is required to  
21 the allegations in the second sentence of paragraph 102, deny; aver that the rehearing process  
22 is set forth in A.R.S. § 30-810. Further deny the allegations in the second sentence of  
23 paragraph 102 relating to SolarCity's search for evidence for lack of knowledge or  
24 information sufficient to form a belief as to their truth.

25 103. To the extent the quotation in paragraph 103 accurately quotes a statement  
26 made by a Board member, that quotation speaks for itself and no response is required. Deny  
27 the remaining allegations in paragraph 103.

1           104. To the extent the allegations in paragraph 104 accurately describe the  
2 referenced letter, that letter speaks for itself and no response is required. Deny the remaining  
3 allegations in paragraph 104.

4 ***[Anticompetitive Impact And Tortious Conduct]***

5           105. Deny the allegations in the first sentence of paragraph 105 because they are not  
6 sufficiently specific about the emails referenced to permit an informed response. The  
7 District admits that, for certain customers who purchase all of their electricity from the  
8 District, the residential SEPPs adopted by the District's Board on February 26, 2015 include  
9 a fixed monthly service charge of \$20 as well as a per-kWh electricity usage rate. The  
10 District admits that the changes to the residential SEPPs adopted on February 26, 2015 were  
11 projected to result in an average 3.9% increase in a residential customer's monthly bill  
12 beginning in April 2016 and avers that the average increase for the first year the new SEPPs  
13 are in place were projected to be 3.3%. Except as expressly admitted, deny.

14           106. The District admits that most of the District's self-generating (or "partial  
15 requirements") residential customers are distributed solar customers. Deny the allegations in  
16 the last sentence of paragraph 106 because they are not sufficiently specific about the emails  
17 referenced to permit an informed response. Except as expressly admitted, deny.

18           107. The District admits that the District grandfathered existing distributed solar  
19 users into its prior pricing plans. Except as expressly admitted, deny.

20           108. To the extent the allegations in paragraph 108 and subparagraphs 108(a)-(c)  
21 accurately describe the SEPPs approved by the District's Board on February 26, 2015, those  
22 SEPPs speak for themselves and no response is required. Further, the allegations in  
23 subparagraphs 108(a)-(b) constitute legal conclusions to which no response is required. To  
24 the extent a response is required, deny the allegations in paragraph 108 and subparagraphs  
25 108(a)-(c).

26           109. Deny the allegations in the first sentence of paragraph 109. To the extent the  
27 allegations in the second sentence of paragraph 109 accurately describe the referenced  
28



1 consultant's statements, those statements speak for themselves and no response is required.  
2 Deny the remaining allegations in paragraph 109.

3 110. Deny the allegations in paragraph 110 for lack of knowledge or information  
4 sufficient to form a belief as to their truth. Further deny the allegations in paragraph 110  
5 because they are not sufficiently specific about the SEPPs at issue to permit an informed  
6 response.

7 111. Deny.

8 112. Deny.

9 113. Deny.

10 114. Deny.

11 115. To the extent the quotation in paragraph 115 is accurate, that quotation speaks  
12 for itself and no response is required. Deny the remaining allegations in paragraph 115.

13 116. The District admits that it received about 500 distributed solar applications per  
14 month from May through October 2014. The District further admits that it received 75  
15 distributed solar applications between December 8, 2014 and April 15, 2015. Except as  
16 expressly admitted, deny.

17 117. Deny the allegations in the first sentence of paragraph 117. Deny the  
18 allegations in the second sentence of paragraph 117 because they are not sufficiently specific  
19 about the studies referenced to permit an informed response. Deny the remaining allegations  
20 in paragraph 117.

21 118. The allegations in paragraph 118 are no longer at issue in this case following  
22 the Court's October 27, 2015 ruling on the District's motion to dismiss (ECF No. 77) and no  
23 response is required. To the extent a response is required, deny.

24 119. The allegations in paragraph 119 and in subparagraphs 119(c) and (d)  
25 constitute legal conclusions to which no response is required. The remaining allegations in  
26 paragraph 119, including subparagraphs 119(a) and 119(b), are no longer at issue in this case  
27 following the Court's October 27, 2015 ruling on the District's motion to dismiss (ECF No.  
28

77) and no response is required. To the extent a response is required to paragraph 119 or subparagraphs 119(a)-(d), deny.

120. Deny the allegations in paragraph 120 and subparagraph 120(a). Deny the allegations in subparagraphs 120(b)-(e) related to SolarCity's interactions with third parties for lack of knowledge or information sufficient to form a belief as to their truth. Deny any remaining allegations in subparagraphs 120(b)-(e).

121. Deny the allegations in paragraph 121 and subparagraphs 121(a) and (b).

***[Harm and Damage]***

122. The allegations in paragraph 122 are no longer at issue in this case following the Court's October 27, 2015 ruling on the District's motion to dismiss (ECF No. 77) and no response is required. To the extent a response is required, deny. Deny the remaining allegations in paragraph 122.

123. Deny the allegation in the first sentence of paragraph 123. Deny the allegations in the second sentence of paragraph 123 because they are not sufficiently specific as to the relevant benchmark or time period to permit an informed response. To the extent a response is required, deny.

124. Deny the allegations in the first sentence of paragraph 124 for lack of knowledge or information sufficient to form a belief as to their truth. Further deny the allegations in paragraph 124 because they are not sufficiently specific about the SEPPs at issue to permit an informed response. Deny that the District's SEPPs are punitive. Deny that the quotations included illustrate the effect of the SEPPs. To the extent the quotations are accurate, they speak for themselves and no response is required. Deny the remaining allegations in paragraph 124.

125. Deny the allegations in paragraph 125 for lack of knowledge or information sufficient to form a belief as to their truth.

***[SRP's Conduct Has No Legitimate Justification]***

126. The allegations in paragraph 126 constitute legal conclusions to which no response is required. To the extent a response is required, deny.

1           127. The allegations in paragraph 127 constitute legal conclusions to which no  
2 response is required. To the extent a response is required, deny.

3           128. The allegations in paragraph 128 constitute legal conclusions to which no  
4 response is required. To the extent a response is required, deny.

5           129. The allegations in paragraph 129 constitute legal conclusions to which no  
6 response is required. To the extent a response is required, deny.

7           130. To the extent the quotation in paragraph 130 is accurate, that quotation speaks  
8 for itself and no response is required. Deny the remaining allegations in paragraph 130.

9           131. Deny, except as to the second sentence of paragraph 131. With respect to the  
10 second sentence of paragraph 131, the District admits it offers some customers Community  
11 Solar through bill credits that result in selling Community Solar power to those customers at  
12 cost; except as expressly admitted, deny.

13           132. The allegations in the first sentence of paragraph 132 constitute legal  
14 conclusions to which no response is required. To the extent the quotation in the second  
15 sentence of paragraph 132 is accurate, that quotation speaks for itself and no response is  
16 required. To the extent a response is required, deny.

17           133. The allegations in the first sentence of paragraph 133 constitute legal  
18 conclusions to which no response is required. To the extent a response is required, deny.  
19 Deny the remaining allegations in paragraph 133.

20           134. The District admits that the E-27 price plan applies only to self-generating  
21 customers. Except as expressly admitted, deny.

22           135. Deny.

23           136. To the extent the quotation in paragraph 136 is accurate, that quotation speaks  
24 for itself and no response is required. Deny the remaining allegations in paragraph 136.

25           137. Deny.

26           138. To the extent the allegations in paragraph 138 describe actions taken by other  
27 utilities, they are denied for lack of knowledge or information sufficient to form a belief as to  
28 their truth. Deny the remaining allegations in paragraph 138.

















## AFFIRMATIVE DEFENSES

The District incorporates by reference the foregoing paragraphs in their entirety. Without assuming any burden of proof it would not otherwise bear, the District asserts the following affirmative defenses. The Amended Complaint does not describe the claims or events with specific particularity for the District to ascertain other defenses that may exist. The District, therefore, reserves its right to assert such defenses as may pertain to the claims and allegations contained in the Amended Complaint once the claims and allegations are ascertained. The District reserves the right to assert further defenses as discovery proceeds.

1. Plaintiff's claims are barred, in whole or in part, for failure to state a claim upon which relief can be granted.

2. Plaintiff's claims are barred, in whole or in part, by the doctrines of waiver, estoppel, and/or laches.

3. Plaintiff's claims are barred, in whole or in part, because any and all of the District's conduct has been the result of the exercise of reasonable, independent judgment based on legitimate business and economic justifications.

4. Plaintiff's claims are barred, in whole or in part, because it has not suffered actual, cognizable injury under the antitrust laws.

5. Plaintiff's claims are barred, in whole or in part, by the state action immunity doctrine.

6. Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

7. Plaintiff's claims are barred, in whole or in part, by the filed rate doctrine.

8. Plaintiff's claims are barred, in whole or in part, because the conduct at issue is not anticompetitive.

9. Plaintiff's claims are barred, in whole or in part, by the *Noerr-Pennington* doctrine.

10. Plaintiff's state law damages claims are barred by A.R.S. § 12-820.01.

11. The Court should abstain from deciding this case under the *Burford* doctrine.

12. Plaintiff's claims are barred, in whole or in part, for failure to comply with Arizona's notice of claims statute, A.R.S. § 12-821.01.



- 1 B. The District has not engaged in anticompetitive conduct in violation of the  
2 Sherman Antitrust Act, 15 U.S.C. §§ 1 and 2; the Clayton Antitrust Act, 15  
3 U.S.C. § 14; or the Arizona Uniform State Antitrust Act, A.R.S. §§ 44-1402,  
4 1403;
- 5 C. The District has not tortuously interfered with Plaintiff's contracts or prospective  
6 economic advantage;
- 7 D. Plaintiff is not entitled to recover any damages from the District;
- 8 E. Plaintiff is not entitled to equitable or injunctive relief;
- 9 F. The District recover its costs of this suit, including reasonable attorney's fees as  
10 provided by law; and
- 11 G. The District receive other or further relief as may be just and proper.

12 **JURY TRIAL DEMANDED**

13 Pursuant to Fed. R. Civ. P. 38(b), the District demands a trial by jury of all of the  
14 claims asserted in SolarCity's Amended Complaint so triable. The District avers that a jury  
15 trial is not available for the determination of injunctive relief, to the extent available, for any  
16 and all claims remaining from the Court's October 27, 2015 ruling on the District's motion  
17 to dismiss (ECF No. 77), or any subsequent ruling that may further limit or dispose of  
18 SolarCity's claims.

19 RESPECTFULLY SUBMITTED this 13th day of November, 2015.

21 /s/ Christopher E. Babbitt

22 STEPTOE & JOHNSON LLP  
23 Paul K. Charlton  
Karl M. Tilleman  
24 201 East Washington Street, Suite 1600  
Phoenix, AZ 85004  
25 Telephone: (602) 257-5200  
26 Facsimile: (602) 257-5299  
pcharlton@steptoe.com  
27 ktilleman@steptoe.com

22 WILMER CUTLER PICKERING HALE AND  
DORR LLP  
Molly S. Boast  
24 7 World Trade Center  
250 Greenwich Street  
New York, NY 10007  
26 Telephone: (212) 230-8800  
Facsimile: (212) 230-8888  
molly.boast@wilmerhale.com

1 Christopher E. Babbitt  
2 1875 Pennsylvania Avenue NW  
3 Washington, DC 20006  
4 Telephone: (202) 663 6000  
5 Facsimile: (202) 663 6363  
6 christopher.babbitt@wilmerhale.com

7 Christopher T. Casamassima  
8 350 South Grand Ave.  
9 Los Angeles, CA 90071  
10 Telephone: (213) 443-5300  
11 Facsimile: (213) 443-5400  
12 chris.casamassima@wilmerhale.com

13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28 Attorneys for Defendant

**CERTIFICATE OF SERVICE**

I hereby certify that on November 13, 2015, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

BOIES, SCHILLER & FLEXNER LLP  
300 South Fourth Street, Suite 800  
Las Vegas, NV 89101  
Richard J. Pocker (012548)

BOIES, SCHILLER & FLEXNER LLP  
5301 Wisconsin Avenue, NW  
Washington, DC 20015  
William A. Isaacson (*admitted pro hac vice*)  
Karen L. Dunn (*admitted pro hac vice*)

BOIES, SCHILLER & FLEXNER LLP  
1999 Harrison Street, Suite 900  
Oakland, CA 94612  
Steven C. Holtzman  
John F. Cove, Jr.  
Kieran P. Ringgenberg  
Sean P. Rodriguez

COPPERSMITH BROCKELMAN PLC  
2800 North Central Avenue, Suite 1200  
Phoenix, AZ 85004  
Keith Beauchamp  
Roopali H. Desai

/s/ Christopher E. Babbitt